

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10704 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

MANJULABEN JAGUBHAI RATHOD

Versus

GOVERNMENT OF GUJARAT

Appearance:

MR HARSHAD J SHAH for Petitioner

MR BY MANKAD,AGP, for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 07/07/97

ORAL JUDGEMENT

Rule. Mr. B.Y.Mankad, learned AGP waives service of the Rule on behalf of the respondent. At the request of the learned Advocates of the respective parties, this matter is finally heard to-day.

The petitioner has filed the present petition against the order Annexure "C" dated 28-11-1996 of the Deputy Secretary, Civil Supplies Department of the State

of Gujarat, confirming the order at Annexure "A" dated 23-2-1994 passed by the Collector whereby the authority has forfeited the deposited amount of Rs.5,000/- and cancelled the licence obtained by the petitioner for running the rice mill.

On 26-8-93, an inspection was carried out at the premises of the petitioner by the officers of the Civil Supplies Department and as a result of the said inspection a report was made to the Collector that 92 bags each weighing 70 kgs of paddy were found from the premises of the petitioner and which were not entered in the stock register. The Collector, after issuing the show cause notice and hearing the petitioner, passed the impugned order at Annexure "A" which is confirmed in appeal vide Annexure "C" by the Deputy Secretary, Civil Supplies Department, Government of Gujarat.

Now, the law relating to imposition of penalty is well settled inasmuch as when there is no allegation regarding black marketing of the excess stock, the allegation of excess stock without entering the same into the stock register is a technical breach of the provisions of the Essential Commodities Act and, therefore, it is not proper to confiscate 100% of the goods. In the instant case, since there is no allegation of black marketing of excess stock of paddy either in the show cause notice or in the order, despite that the authorities have not only cancelled the licence for running the rice mill but have also forfeited the amount of deposit of Rs.5,000/-. The petitioner has to-day filed an affidavit stating that for the purpose of setting up the Rice Mill she taken a loan of Rs.4,72,000/- from the Gujarat State Finance Corporation and she is paying the instalments regularly and still an amount of about Rs.3,00,000/- are to be paid. She has further stated that by virtue of the interim order passed by the authorities which has continued till date right from 26-8-93, she has not indulged into any illegality or irregularity in doing the business. In view of this, considering the facts of the case, I am of the view that the interest of justice would be met with if the order cancelling the licence passed against the petitioner is set aside and the order forfeiting the deposit amount of Rs.5000 is confirmed.

In the result, the petition is partly allowed and the order cancelling the licence passed against the petitioner is set aside and the order forfeiting the deposit amount of Rs.5000 is confirmed. It will be open to the respondent to demand a fresh deposit of Rs.5,000

from the petitioner. Rule is made absolute to the above
extent with no order as to costs.

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